

## REMARKS

The applicants have carefully considered the Office action dated December 24, 2009, and the reference it cites. In view of the following remarks, it is respectfully submitted that all pending claims are in a condition for allowance. Accordingly, reconsideration of the application and allowance thereof are respectfully requested.

### **35 U.S.C. §102 Rejections**

In the Office action, claims 27, 32-34, 36-37, 46, 48-50, 55-59, 64 and 65 were rejected as anticipated by Kish (US 6,488,464). The applicants respectfully traverse these rejections.

The applicants respectfully submit that independent claim 27 is allowable over Kish. Claim 27 is directed to a method of operating a vehicle brace including, *inter alia*, continuously exerting an upward biasing force on the vehicle brace by way of a first actuation system and selectively causing, by way of a second actuation system, the vehicle brace to apply a reactive upward force separate from the upward biasing force and adjacent a vehicle's rear edge to substantially reduce downward movement of the vehicle's rear edge that would result from the applied weight of the material handling equipment in the absence of the reactive upward force.

Kish fails to teach such a method. In particular, the vehicle restraint of Kish includes a barrier (14) that moves between an operative position and a stored position via an actuator (28). (col. 3, ll. 48-50). A biasing element (74) enables the barrier (14) to move to a second operative position (FIG. 5) to allow the barrier (14) to descend when weight is added to the vehicle and the actuator (28) is locked in position (i.e., neither extends nor retracts). (col. 5, ll. 66-67 and col. 6, ll.1-5). Additionally, the vehicle

restraint of Kish includes a sensor or switch actuator (60) that engages limit switches (56 and 58) to provide a signal or indication that a vehicle's ICC bar is in engagement with the barrier (14). (col. 5, ll.5-22). The switch actuator (60) includes a rod (62) attached to an inverted U-shaped bracket (64) and is rotatably coupled to the barrier (14) about a pivot (48) via a pin (66) that extends through the two side plates (38) of barrier (14). (col. 5, ll. 21-45).

The Official action erroneously alleges that the spring (70) acts as a first actuation system that biases an alleged vehicle brace (the switch actuator 60) to a raised, operative position. Although one can argue that a spring can act as an actuation system, it is a mischaracterization to call the switch actuator (60) a vehicle brace, especially when Kish clearly indentifies that barrier (14) exerts an upward force to an ICC bar 18 of a vehicle (col. 3, ll. 29-40).

The switch actuator (60) cannot act as a brace to support a vehicle's ICC bar as alleged by the Office action. On the contrary, Kish teaches away from such a characterization alleged by the Office action. In particular, when a vehicle's ICC bar engages the switch actuator (60) of Kish, the switch actuator (60) rotates about a pivot (48) **below** an upper surface of a shank (16) of the barrier (14) and **into a cavity (72) between side plates (38) to protect the switch actuator (60) from damage.** (col. 5, ll.39-43). Instead, the upper surface of shank (16) engages the ICC bar such that barrier (14) presses up against the underside of a truck's ICC bar (18), not the switch actuator (60) as alleged by the Office action. (FIG. 1; col. 3, ll. 34-36; col. 5, ll. 21-45).

Modifying Kish to meet the recitations of claim 27 requires a person of ordinary skill in the art to ignore the teachings and purpose of the barrier (14) of Kish (which

exerts an upward force toward the vehicle's ICC bar) and ignore the explicit teachings that the switch actuator (60) rotates within the cavity (72) to protect the switch actuator (60) from damage when an ICC bar of a vehicle engages the barrier (14). Thus, a person of ordinary skill in the art could not see Kish as teaching or suggesting modification of Kish to meet the recitations of claim 27 as alleged by the Office action, because it is impossible for the switch actuator (60) to exert an upward biasing force, that is greater than the weight of the vehicle brace to continuously bias the vehicle brace to a raised position, toward the vehicle's ICC bar, rather than the barrier (14) exerting the recited upward biasing force, especially when the switch actuator (60) is below the shank (16) of the barrier (14) when the ICC bar of the vehicle engages the barrier (14).

Additionally or alternatively, the Office action incorrectly alleges that a second actuation system 28'/100 of Kish causes the alleged vehicle brace (the switch actuator 60) to apply a reactive upward force separate from the upward biasing force apparently provided by the first actuation system (the spring 70) adjacent the vehicle's rear edge. The second actuation system 28'/100 of Kish does not exert a force on switch actuator (60), but instead exerts a force on the barrier (14). As shown in FIGS. 1 and 6 of Kish, the switch actuator (60) (the alleged brace) pivots about pivot point (48), which, incidentally, also provides a convenient location for coupling piston rod (46) of the second actuation system 28'/100 to the barrier (14). (col. 5, ll. 29-31). Because the switch actuator (60) (the alleged barrier) pivots independently about the same axis that provides the connection/pivot (48) for the alleged second actuation system 28'/100, the second actuation system 28'/100 does not exert any force on switch actuator 60. As such, the second actuation system 28'/100 cannot cause the switch actuator (60) (the alleged

vehicle brace) to apply a reactive upward force adjacent the vehicles' rear edge because the second actuation system 28'/100 does not exert a force on the switch actuator (60) (the alleged vehicle restraint). Thus, it is impossible to cause the second actuation system 28'/102 of Kish to apply a reactive upward force to the alleged brace (the switch actuator 60) as indicated by the Office action.

Further, the vehicle restraint of Kish is not intended to perform as a vehicle brace. Applicants' claimed vehicle brace selectively causes the vehicle brace to apply a reactive upward force adjacent the vehicle's rear edge to substantially reduce downward movement of the vehicle's rear edge that would result from the applied weight of the material handling equipment in the absence of the reactive upward force. Thus, the vehicle restraint of Kish follows the incidental movement of the ICC bar 18, whereas the vehicle brace of applicants' claims substantially reduces downward movement of the vehicle's rear edge. The vehicle restraint of Kish enables the barrier (14) to follow the incidental movement of the ICC bar (18), but does not substantially reduce downward movement of the vehicle's rear edge. To change the vehicle restraint of the Kish to a vehicle brace of the kind described and claimed in U.S. Patent Application No. 10/743,577 would require substantial and significant redesign changes, which would unreasonably increase the cost and complexity of the vehicle restraint of Kish, let alone changing or converting the vehicle restraint to a different kind of device than that disclosed.

Therefore, Kish neither anticipates, nor renders obvious, claim 27 or any claims dependent thereon. Accordingly, claim 27 and all claims dependent therefrom are in condition for allowance.

Independent claim 50 and all the claims that depend therefrom are also patentable over Kish. Claim 50 is directed to a method to operate a vehicle brace including, *inter alia*, biasing a vehicle brace to a raised position by continuously exerting on the brace an upward biasing force, permitting the vehicle brace to be pushed down to a preparatory position by horizontal movement of the vehicle as the vehicle moves toward the loading dock and is in engagement with the vehicle brace, and selectively causing the vehicle brace to apply a reactive upward force to reduce downward movement of the vehicle's rear edge that would result from the applied weight of the material handling equipment in the absence of the reactive upward force. As pointed out above, Kish fails to teach or suggest such a method. Thus, Kish neither anticipates, nor renders obvious, claim 50 or all claims that depend therefrom. Accordingly, claim 50 and those claims depending therefrom are allowable.

Finally, independent claim 59 is also patentable over Kish. Claim 59 is directed to a method of operating a vehicle brace including, *inter alia*, biasing, by way of a first actuation system, a support member to a raised position, selectively causing, by way of a variable length second actuation system, the support member to exert a reactive upward force against the vehicle's rear edge to appreciably and controllably slow the descent of the vehicle, and controlling, by way of a control system, a magnitude of the upward reactive force. As discussed above, Kish fails to teach or suggest such a method. Thus, Kish neither anticipates, nor renders obvious, claim 59 or all claims that depend therefrom. Accordingly, claim 59 and those claims depending therefrom are allowable.

**35 U.S.C. §103 Rejections**

In the Office action, claims 28-31, 51-54 and 60-63 were rejected as unpatentable over Kish. The applicants respectfully traverse these rejections. These claims depend either directly or indirectly from their respective independent claims 27, 50 and 59 and are allowable for the same reasons in connection therewith. Therefore, claims 28-31, 51-54 and 60-63 are in condition for allowance.

### **CONCLUSION**

In general, the Office Action makes various statements regarding the claims and the cited references that are now moot in light of the above. Thus, the applicants will not address such statements at the present time. However, the applicants expressly reserve the right to challenge such statements in the future should the need arise (*e.g.*, if such statements should become relevant by appearing in a rejection of any current or future claim).

In view of the foregoing amendments and remarks, it is respectfully submitted that the pending claims are in condition for allowance. If the Examiner is of the opinion that a further telephonic conference would expedite the prosecution of this application, the Examiner is urged to contact the undersigned attorney at the number below.

The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application to Deposit Account No. 50-2455.

Respectfully submitted,

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